

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

W.A.No.1226 of 2007 and
M.P.No.1 of 2007

The Tamil Nadu Wakf Board,
rep. By its Chief Executive Officer,
No.4, 9th Cross Street,
Indira Nagar,
Adyar, Chennai 600 020.

Appellant

vs.

1. The Commissioner of Land Reforms
and Agricultural Income Tax,
Chepauk, Chennai 600 005.
 2. The Agricultural Income Tax Officer,
Nagercoil, Kanyakumari District.
- Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 24.3.2007 in W.P.No.10938 of 2007 this Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a writ of certiorari calling for the records relating to the order of the first respondent in his proceedings R.P.No.19/2002-C1 dated 5.5.2006, confirming the order of the second respondent dated 4.4.2002 made in his proceedings Roc.A1.1835/2000 and quash the same.

For Appellant :: Mr.A.S.Kaizer

For respondents :: Mr.Haja Nazirudeen,
Special Govt. Pleader (Taxes)

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY THE HONOURABLE THE CHIEF JUSTICE)

Admit. Learned Special Government Pleader waives notice to the respondent. By consent, the writ appeal is taken up for hearing.

2. Appellant is the Tamil Nadu Wakf Board which is a statutory Board constituted under the Wakf Act, 1995. There is a Wakf called "Hazarath Fazil Shah Oulia Thaika alias Thaikkapalli" at Ekalakudi, Kottar, Nagercoil for which extensive landed properties for an extent of 92.40 acres of wet land and 29.64 acres of dry land have been dedicated for the celebration of Urs (Death Anniversary) of the said saint and for other religious ceremonies connected with the above said Thaikka and for feeding the poor and needy persons, etc. The nature of the Wakf is only pious or religious one. The Wakf properties have been said to be dedicated about 200 years ago by one Addus Salim Khan and Afghan disciple of the saint as per the proforma report published under the Wakf Act. It appears that in view of several breaches of the Trust committed by the Muthavalli and his agents, the Wakf Board passed a Resolution dated 23.4.1977 in W.A.No.9 of 1977 and the management of the estate was taken over by the Wakf Board. Accordingly, a statutory notification was published in the Official Gazette dated 15.6.1997 and since then, the Wakf Board is in management of the properties of Hazarath Fazil Shah Oulia Thaika alias Thaikkapalli.

3. It appears that the second respondent, on 15.11.1997, served a memo to the Estate Officer of the Wakf Board demanding payment of Rs.61,450/= as arrears of agricultural income tax under the Tamil Nadu Agricultural Income Tax Act, 1955 on the said Wakf lands for 6 years from 1972-73 to 1977-78. Though Revision Petitions bearing R.P.Nos.181 to 183 of 1982 were filed against these orders, the revisional authority rejected the revision petitions in limine on the ground that the same were barred by time. The Wakf Board then approached this Court in W.P.Nos.5041, 5295 and 5446 of 1982 and this Court by order dated 30.1.1989 allowed the writ petitions directing the first respondent to provide an opportunity to the Wakf Board by issuing a show cause notice. Accordingly, after issuance of show cause notice and reply thereof, the first respondent, by order dated 16.9.1999, was pleased to condone the delay accepting the explanation for delay, but, dismissed the revision petitions on the ground that the appellant has not produced any certificate obtained from the Income Tax Department under section 12(a) of the Central Income

Tax Act so as to claim exemption of assessment under section 4(b) of the Agricultural Income Tax Act, 1955.

4. The above order was challenged by the appellant in W.P.No.5583 of 1991 and this court, by order dated 11.10.2000, allowed the writ petition and remanded the matter to the first respondent with the following direction:-

"Considering the facts and circumstances of the case, it is suffice to set aside the impugned proceedings dated 16.9.1989 and remit the matter to the first respondent with a direction to the petitioner to deposit a sum of Rs.61,450/= with the second respondent to the credit of the above revision petitions within eight weeks from the date of receipt of a copy of this order and such deposit shall be subject to the final orders in the revision petitions; the petitioner is permitted to approach the authorities with other materials to satisfy that the petitioner is a public charitable Wakf entitled for the benefit of exemption from paying the agricultural income tax, within two weeks from today; and the respondents shall dispose of the matter within twelve weeks from the date of production of such materials."

5. Pursuant to the above order, the matter was taken up by the first respondent and the first respondent remanded the matter to the second respondent for disposal by order dated 1.11.2001. The second respondent, by his order dated 4.4.2002, again dismissed the petitions on the very same ground on which it was dismissed on the earlier round of litigation. Aggrieved by the said order, the petitioner filed a revision petition in R.P.No.19 of 2002 before the first respondent. The first respondent, by order dated 5.5.2006 dismissed the revision petition against which the petitioner preferred the above writ petition which came to be dismissed by the learned Single Judge by the order under appeal.

6. Heard Mr.A.S.Kaizer, learned counsel for the appellant and Mr.Haja Nazirudeen, Special Govt. Pleader (Taxes) for the respondents.

7. Learned counsel for the appellant strenuously submitted that the income derived by the Religious and Charitable Trust is exempt under the provisions of Agricultural Income Tax Act, and the income of the petitioner is also exempted under the provisions of the Income Tax Act. Learned counsel drew our attention to section 4 of the Tamil Nadu Agricultural Income Tax Act which reads as follows:-

"S.4: Total Agricultural Income: Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State (which is received by him or which accrues to him) within or without the State, but does not include--
a) any agricultural income derived from land situated without the State;
b) any agricultural income derived from property held under trust, wholly or partly for charitable or religious purposes, to the same extent to which income derived from property under trust wholly or partly for charitable or religious purposes, is not included in the total income for purposes of the Income Tax Act, 1961 (Central Act XLIII of 1961)."

8. On a plain reading of the said provision, it is very clear that the agricultural income derived from a property held under the Trust wholly or partly for charitable purposes is not included in the total income for the purpose of Agricultural Income Tax Act, 1955. The appellant Wakf is a public Wakf. It has produced on record the following documents to prove that it is a Charitable and Public Wakf and it is entitled to benefit of exemption:-

- "i) 6.2.1980 Ministry of law and Company Affairs Wakf unit F.No.2(1)/73-Wakf - Re-insertion of C1 23 BBA to Sec.10 of I.T. Act.
- ii) 7.4.1980 Letter from Under Secretary C.T. & R.E. To Examiner of Local Funds Accounts, Madras enclosing copy of Government of India F.No.2(1)/73 dated 6.2.1980.
- iii) Letter of Examiner Local Fund Accounts to Wakf Board dated 22.4.1980.
- iv) 14.8.1981 Dy.No.1080/81 - TPL Government of India, Ministry of Finance.
- v) 16.2.1982 Letter NO.13(19)(1)/79 - Wakf Government of India, Ministry of Law, Justice & Com. Affairs enclosing Memorandum No.1080/81 - TPL dated 14.9.1981.
- vi) Copy of Memorandum of All India Wakf Conference held on 16th to 18th February 1979."

9. In the order of the first respondent, a specific finding has been recorded that Hazarath Fazil Shah Oulia Thaika alias Thaikkapalli is carrying out public and charitable objects as prescribed by the original deed as follows:

"All these arguments have been heard by me, and I have also gone through the records placed before me. It is an admitted fact that Thiru Hazarath Fazil Sha Oulia Durgah is carrying out

the Public Charitable objects as prescribed in the original deed. All the documents produced before me show that they are notified as a Public Charitable Institution under the control of Wakf Board to get exemption under Income Tax Act."

10. The provisions of section 4(b) fell for consideration of a Division Bench of this court in STATE OF TAMIL NADU v. EZHUMESWARAMUDAYAR TEMPLE (Vol.247 ITR 521) in which the Division Bench observed as follows:-

"As already adverted to, the subject-matter of taxation cannot be any one other than "agricultural income" under the Act. For the sake of emphasis, we may again reiterate that the income from the property held under trust for religious or charitable purposes, which were originally exempt from tax was sought to be taxed by Act 4 of 1973 with effect from April 1, 1972, by the introduction of clause (b) of section 4 and in such process, income from property held under trust for religious or charitable purposes is sought to be exempted in the manner and methodology contemplated therein. In the context in which the phraseology, "to the same extent to which the income derived from property held under trust wholly or partly for charitable or religious purposes is not included in the total income for the purposes of the Income-tax Act, 1961," occurring in the said clause, no meaning can be ascribed, except as to how under the Income-tax Act, the income derived from non-agricultural property held by a charitable and religious trust is taxable and to the same extent, the agricultural income would be taxable under the said clause of the Act. If any other meaning is given to the said phraseology, it would lead to absurd results. In the process of interpretation of the phraseology, as extracted above, we have to accredit wisdom and knowledge to the Legislature in enacting such a clause to the relevant provisions of the Income-tax Act and the provisions of the Constitution, we have earlier referred to and that perhaps was the reason they have introduced clause (b) of section 4 to tax "agricultural income" from property held under trust for religious or charitable purposes in the same manner, as had been enacted in the Income-tax Act, as relatable to non-agricultural

income from property held under trust for religious and charitable purposes for the purpose of income-tax.

Certain consequences are to flow from what has been stated above. There is no need for a religious or charitable trust, receiving income on agriculture from the lands held by them, to get the trust registered under the relevant provisions of the Income-tax Act for claiming a little bit of exemption of tax, as had been granted in clause(b) of section 4 of the Act. It is only such sort of religious or charitable trust holding property and deriving non-agricultural income alone have to get themselves registered under the relevant provisions of the Income-tax Act for getting exemption from taxation (emphasis supplied)"

11. It is clearly seen from the above cited judgment of the Division Bench that there is no need for a religious or charitable trust, receiving income on agriculture from the lands held by them, to get the Trust registered under the relevant provisions of the Income-tax Act for claiming exemption of tax under section 4 (b) of the Act. It is only such sort of religious or charitable Trust holding property and deriving non-agricultural income will have to get themselves registered under the relevant provisions of the Income-tax Act for getting exemption from taxation. The Wakf in question is a Charitable institution and the entire income of the Trust is derived from the agricultural lands owned by the Trust and consequently, such income is exempt under section 4(b) of the Act.

12. In the result, the writ appeal is allowed. The order of the learned Single Judge is set aside. The respondents are directed to refund the amount of Rs.61,450/= deposited by the appellant within a period of eight weeks from today. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

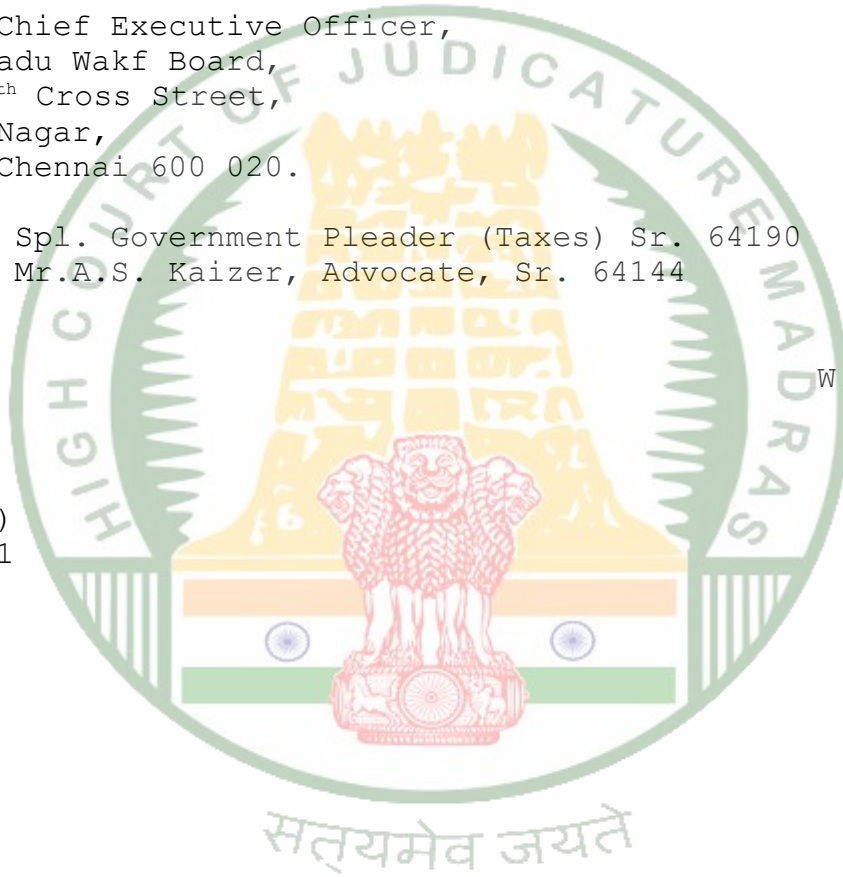
To

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3. The Chief Executive Officer,
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Adyar, Chennai 600 020.

1 cc to Spl. Government Pleader (Taxes) Sr. 64190
1 cc to Mr.A.S. Kaizer, Advocate, Sr. 64144

W.A. No.1226/2007

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